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SERIAL NUMBER	FILING DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO.
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MM21/0420

EXAMINER	
ROSENBERGER, R	
ART UNIT	PAPER NUMBER
2877	11

DATE MAILED: 04/20/99

Below is a communication from the EXAMINER in charge of this application

COMMISSIONER OF PATENTS AND TRADEMARKS

ADVISORY ACTION

☒ THE PERIOD FOR RESPONSE:

a) ☒ is extended to run _____ or continues to run 3 months from the date of the final rejection

b) ☐ expires three months from the date of the final rejection or as of the mailing date of this Advisory Action, whichever is later. In no event however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

☐ Appellant's Brief is due in accordance with 37 CFR 1.192(a).

☒ Applicant's response to the final rejection, filed 3-30-99 has been considered with the following effect, but it is not deemed to place the application in condition for allowance:

1. ☒ The proposed amendments to the claim and/or specification will not be entered and the final rejection stands because:

a. ☐ There is no convincing showing under 37 CFR 1.116(b) why the proposed amendment is necessary and was not earlier presented.

b. ☒ They raise new issues that would require further consideration and/or search. (See Note).

c. ☐ They raise the issue of new matter. (See Note).

d. ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.

e. ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

2. ☐ Newly proposed or amended claims _____ would be allowed if submitted in a separately filed amendment cancelling the non-allowable claims.

3. ☒ Upon the filing an appeal, the proposed amendment ☒ will be entered ☐ will not be entered and the status of the claims will be as follows:

Claims allowed: _____

Claims objected to: _____

Claims rejected: 20-37

However;

☐ Applicant's response has overcome the following rejection(s): _____

4. ☐ The affidavit, exhibit or request for reconsideration has been considered but does not overcome the rejection because _____

5. ☐ The affidavit or exhibit will not be considered because applicant has not shown good and sufficient reasons why it was not earlier presented.

☐ The proposed drawing correction ☐ has ☐ has not been approved by the examiner.

☐ Other

1. The proposed amendment after final filed 30 March 1999 will not be entered because it raises significant new issues that would require additional consideration.

The proposed claims are unclear and confusing.

For example, in proposed claim 38 the step of "processing of a detected signals" is ungrammatical, and there is no relationship stated between the "detected signals" and the detecting of particles" previously stated in the claim.

In proposed claim 41, the proposed claim has, at several points, the phrase "at least one of a plurality", this is unclear because it is not clear if the claim covers and is intended to cover only one of each or the claim is intended to cover only a plurality of the elements. The fact that proposed claim 41 uses this language with both the "wireless communicating remote detecting systems" and with "wireless communicating remote data processing and control systems" renders the claim particularly unclear, in that it is unclear if there are or are intended to be a one-to-one relationship between the two parts, or whether there is intended to be different numbers of the two parts.

In proposed claim 46, the apparatus claimed appears to be, as the claim is written, "a detected signal processing means" and a "signal processing means", which are "connected together". It is unclear how the method steps of "providing a preprocessing . . . and a processing . . .", and the method step of "strobing" relate to structure in this apparatus claim.

2. The remarks filed 30 March 1999 have been considered but have not been found to be persuasive.

It is certainly correct that the Martin et al reference does not show exactly what is claimed, but the rejection is in no way based upon any allegation that it does. Martin et al does show that it is known in the art to use wireless communication between an optical particle detection system and a base station which receives the signals from the detecting station. The use of such known wireless communication with other known optical particle detection systems would have been obvious.

The Martin et al reference is not from a relevantly different technical field. Both the device of Martin et al and the use wireless communication to send data from a remote optical particle detecting device. Clearly those in the art would find Martin to be relevant.

The teaching in Martin et al of using wireless communication between a base station and a remote optical detecting station does indeed suggest using wireless communication between a base station and a remote optical detecting station. The Office must take into account the knowledge and skill of those in the art in evaluating obviousness, and the substitution of a wireless communication link for a wire is, as shown by Martin et al, known. Two way wireless communication is so well known that only official notice is needed.

The Martin et al patent solves the same problem as does the instant invention, communicating data in an optical detection system without the use of wires. The fact that the Martin et al reference does not show exactly what is claimed is not persuasive because the rejection is under 35 USC 103 as being obvious, not 35 USC 102 as being anticipated.

The argument that applicant has not mentioned the word "computer" is not understood. The specification teaches "a microprocessor system" which is clearly a computer. The fact that Applicant may have chosen not to use the word "computer" to describe the system does not change the fact that a "microprocessor system" is, in fact, nothing other than a computer.

3. While the remarks quite correctly point out that there are differences between what is disclosed and claimed here and what is in the Martin et al reference. However, the proper test is whether or not what is claimed would have been obvious over the knowledge of those in the art. Those in the art knew optical tests which can measure particles size and quantity; this is mentioned on page 1 of the instant specification. Those in that art knew, as shown by Martin, that wireless communication between an optical measuring instrument and a base station, as well as being familiar in general with the concept of wireless communication in general. Replacing the wires in a prior art system with a bidirectional wireless link, given the general knowledge of wireless communication and the specific teaching of

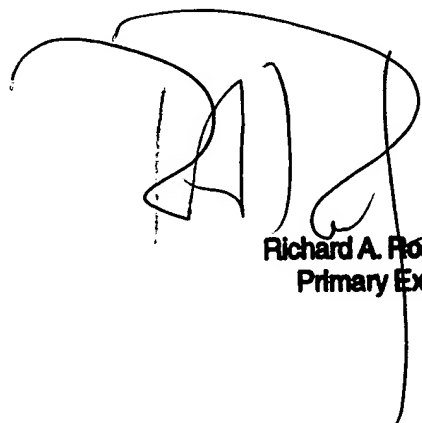
using wireless communication with optical particle detecting systems presented by Martin et al would clearly have been obvious.

4. Papers related to this application may be submitted to Group 2800 by facsimile transmission. The faxing of such papers must conform to the notice published in the Official Gazette, 1096 OG 30 (15 November 1989). The fax number is (703) 308-7722.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to R. A. Rosenberger whose telephone number is (703) 308-4804.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0956.

R. A. Rosenberger
19 April 1999

A large, stylized handwritten signature in black ink, appearing to be 'R.A. Rosenberger', is written over the printed name and title.

Richard A. Rosenberger
Primary Examiner